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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 18 (RMB)

5 JONATHAN CORREA,

6 Defendant.

7 -----x

Teleconference

8 November 10, 2020
9 9:30 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 Acting United States Attorney for
the Southern District of New York

17 BY: M. CHRISTINE SLAVIK

18 Assistant United States Attorney

19 DAVID L. WIKSTROM

20 Attorney for Defendant

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1 THE COURT: Good morning, everybody.

2 A VOICE: Good morning.

3 A VOICE: Good morning.

4 THE COURT: Good morning.

5 Just a little background. This is our first
6 appearance together. Mr. Correa was arraigned on September 1
7 before Magistrate Judge Cott on a one-count indictment charging
8 copyright infringement conspiracy.

9 Without reading the whole document, I will just
10 indicate that the indictment states that, from at least in or
11 about 2011, up to and including around August 2020 of this
12 year, in the Southern District of New York and elsewhere, it
13 alleges that Mr. Correa and others, willfully and knowingly,
14 did combine, conspire, and confederate, and agreed together
15 with each other to commit offenses against the United States.

16 It goes on to describe some of those offenses, or the
17 offenses charged in part, and explains the nature of the
18 conspiracy, which was, in simplest terms, a willful
19 infringement of copyright by the reproduction and distribution,
20 including by electronic means, of ten or more copies of what it
21 calls phonorecords of one or more continued works, which have a
22 total retail value of in excess of \$2,500.

23 It goes on to describe in more detail the overt acts
24 and the objective of the conspiracy -- could I ask everybody
25 who is not speaking to put their phone on mute while somebody

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1 else is talking?

2 So at the -- I think it was at the arraignment that
3 Judge Cott also set bail, which is a \$75,000 bond secured by
4 \$75,000 and cosigned by Jacinda Kahle.

5 Let's talk some process and procedure in this case. I
6 have recently issued an order, so-called *Brady* order, which is
7 required by virtue of a recent amendment to the Federal Rules
8 of Criminal Procedure 5(f), in which the district court is
9 directed and requested to orally, which I am doing at this very
10 moment, and in writing, which I have done by publishing an
11 order, describe and remind the prosecutor of his or her *Brady*
12 obligations. And in a moment I'm going to ask the prosecutor
13 if in fact they have received the order, read the order, and
14 understand, which I am sure they do, their *Brady* obligations,
15 and also the consequences which are set forth in the written
16 order, some of the consequences that can ensue if there is
17 violation of *Brady*.

18 So let's, since the case is new, let's start out by
19 asking the prosecutor if it has had the opportunity to review
20 the order in particular relating to *Brady* obligations.

21 MS. SLAVIK: Yes. Good morning, your Honor. This is
22 Christy Slavik for the government, and I can confirm that the
23 government has received the order from the Court dated
24 yesterday, November 9, 2020. The government has read the order
25 and understands the order.

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1 THE COURT: Both your obligations and the
2 consequences?

3 MS. SLAVIK: That's right, both the obligations and
4 the consequences, your Honor.

5 THE COURT: Great. Thank you so much.

6 So have you all -- when I say "you all," I mean the
7 government and the defense -- had the opportunity to get
8 together and talk about next steps and where we are headed?
9 There is one question that I had. There are other indicated
10 coconspirators, and I just wondered what is the status of any
11 or all of those other individuals? Is Mr. Correa the only
12 defendant that we have before the Court?

13 MS. SLAVIK: Yes, your Honor. At this time Mr. Correa
14 is the only defendant before the Court. Another defendant is
15 currently in extradition proceedings, and another defendant is
16 located in Norway, where there is no extradition treaty, and
17 the government is following up on options with respect to that
18 defendant.

19 THE COURT: Okay.

20 MS. SLAVIK: Now --

21 THE COURT: I'm sorry. Go ahead.

22 MS. SLAVIK: Go ahead.

23 THE COURT: I was just going --

24 MS. SLAVIK: I was going to -- I was going to update
25 your Honor on the status of this case involving Mr. Correa.

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1 THE COURT: Yes. Proceed.

2 MS. SLAVIK: Yes. So since the indictment was
3 unsealed in this case, the parties have engaged in pretty
4 extensive discussions with the goal of reaching a pretrial
5 disposition. We expect to be in a position to update the Court
6 about whether we have reached an agreement on a disposition by
7 the end of November.

8 Now, in consultation with the defense, the government
9 has deferred production of discovery, of course leaving open
10 the possibility of revisiting that decision in the future. But
11 in terms of next steps, the government proposes setting a
12 control date 60 days out, and of course if the parties are able
13 to reach a disposition before that date, the parties will be in
14 touch to inform the Court of that agreement.

15 THE COURT: And the pretrial status, so to speak, or
16 supervision of Mr. Correa, that has gone smoothly, to your
17 knowledge?

18 MS. SLAVIK: Yes, your Honor, very smoothly.

19 THE COURT: And Mr. Correa lives where? I'm not quite
20 sure.

21 MS. SLAVIK: Mr. Wikstrom can jump in if I am wrong,
22 but Mr. Correa lives in Kansas City --

23 MR. WIKSTROM: That's correct, your Honor.

24 MS. SLAVIK: -- which is the Western District of
25 Kansas.

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1 THE COURT: Okay. Got it.

2 Mr. Wikstrom, did you want to add anything?

3 MR. WIKSTROM: No. I think just to concur with
4 everything that Ms. Slavik has told the Court already.

5 THE COURT: Okay. Hold on just one second.

6 So one other point that I wanted to cover, and that
7 has to do procedurally with the fact that we are proceeding by
8 telephone, obviously, and we are not located, as we might, if
9 this were a year or so ago, be in the courtroom having all of
10 these discussions and subsequent proceedings, and I just wanted
11 to get the defense and the government's view of that, which is
12 to say that the reason this is happening is because of the
13 COVID pandemic, which has made it very difficult to have
14 in-court proceedings. In recent weeks, starting actually in or
15 about October 1, there has been some stepped-up efforts to have
16 some backlogged trials conducted in a courtroom, in one of the
17 larger courtrooms in the building. I think, by all accounts,
18 those trials have gone off successfully. There is a recent
19 heightened vigilance with respect to courtroom proceedings
20 because of what appears to be a second, perhaps, or third spike
21 in the virus. So people's antennae are way up. And, in any
22 event, I'm not sure what the impact is going to be for further
23 courtroom proceedings.

24 But, in any event, Mr. Wikstrom, I wanted to ask you
25 if you have discussed this aspect of the case with Mr. Correa,

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1 and if you and he are waiving any rights that you might have to
2 appear live, as it were, in a Southern District courtroom?

3 MR. WIKSTROM: Yes, I have, your Honor. We have
4 discussed extensively his rights to be present in person in
5 court proceedings, and collectively we waive his right for
6 in-person court proceedings and request that the Court conduct
7 proceedings remotely, by telephone or videoconference, in light
8 of the ongoing pandemic.

9 THE COURT: Great.

10 Mr. Correa, just to confirm, that is your wish as
11 described by Mr. Wikstrom?

12 THE DEFENDANT: Yes, sir, it is.

13 THE COURT: Okay. And is the government on board that
14 this is an appropriate and correct way to proceed in light of
15 the current status of the COVID pandemic?

16 MS. SLAVIK: Yes, your Honor.

17 THE COURT: Okay. So before we pick a date, is there
18 anything else that the government or the defense wish to place
19 on the record at this time?

20 Starting with the government.

21 MS. SLAVIK: Your Honor, the government would simply
22 move to exclude time under the Speedy Trial Act from today
23 until the next scheduled date, but we can do that once the
24 control date has been established.

25 THE COURT: Great.

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1 And with respect to any resolution, if you would give
2 me a heads up if that is approaching or is about to happen and,
3 depending upon, among other things, the status of the pandemic,
4 I would be able to tell you whether I would take the allocution
5 or direct you all to go before a magistrate judge. But we
6 don't have to resolve that issue at this moment.

7 MS. SLAVIK: Of course, your Honor.

8 THE COURT: Christine, have you got your calendar
9 handy and can you suggest a date 60 days or so hence?

10 THE LAW CLERK: Yes, Judge. How is Tuesday, January
11 12, at 11:30.

12 THE COURT: That works for me.

13 Is that good for the defense, Mr. Wikstrom?

14 MR. WIKSTROM: It is, your Honor.

15 THE COURT: And, Mr. Correa, that works for you, too?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: The 12th of January 2021, at 11:30.

18 And how about the government?

19 MS. SLAVIK: Yes, your Honor. That's fine for the
20 government.

21 THE COURT: Okay. And with respect to speedy trial, I
22 appreciate your application, and I am also going to find, under
23 18 United States Code, Section 3161, that the request for
24 adjournment to and including January 12, 2021, is appropriate
25 and warrants exclusion of the adjourned time from Speedy Trial

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1 calculations.

2 I further find that the exclusion is designed to
3 prevent any possible miscarriage of justice, to facilitate
4 these proceedings, and to guarantee effective representation of
5 and preparation by counsel for both parties, and thus the need
6 for exclusion and the ends of justice outweigh the interests of
7 the public and the defendant in a speedy trial pursuant to
8 18 U.S.C. § 3161(h)(7)(A) and (B).

9 Just one more afterthought to present to Mr. Wikstrom.
10 So, at the beginning we had this oral discussion about
11 reference to a written order that I have issued with respect to
12 *Brady* obligations, and my question at that time was directed
13 primarily to the government, to the prosecutor, but I didn't
14 mean to not hear from you, Mr. Wikstrom. If there is any
15 aspect of that issue, as I say, the *Brady* issue, that you wish
16 to have me explore in any greater detail or in any other
17 fashion, I'm happy to do that if there is such a comment from
18 you.

19 MR. WIKSTROM: Thank you, your Honor. It is
20 unnecessary. Mr. Correa and I have discussed the Court's order
21 and the implications thereof and are satisfied with the status
22 of things. Thank you.

23 THE COURT: Great. All right. Well, I think, then,
24 that concludes our work for today. Unless there is some other
25 development, we will meet again on January 12, 2021, at 11:30,

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1 in the same fashion as we are meeting today.

2 Thanks, everybody, for your help.

3 MR. WIKSTROM: Thank you, your Honor.

4 THE DEFENDANT: Thank you.

5 MS. SLAVIK: Thank you.

6 THE COURT: You bet. Everybody take care.

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